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October 29, 2020

Hon. Edgardo Ramos
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

MEMO ENDORSED

Via ECF

Re: Caraballo v. City of New York, 18 Civ. 10335 (ER) (SN)

Your Honor:

My office represents Plaintiff David Caraballo in the above-entitled action. In that capacity, I write to respectfully request that the Court issue an order directing Defendants to produce the individual defendants in this matter for depositions on November 4, 5, and 12, 2020. The undersigned met and conferred with attorney for Defendants, Stephen Suhovsky, Esq., regarding these matters on October 28, 2020. In sum, Defendants are attempting to block depositions from occurring concurrently in this matter.

By way of background, the parties set aside the dates of November 4, 5, 11, and 12, 2020, for depositions of the parties. By email on October 20, 2020, Mr. Suhovsky stated that the officers could be deposed on any of the dates that were reserved and that I could choose the date of Mr. Caraballo's deposition, and that the officers' depositions would be "plugged" into the other three dates that I did not choose. Thus, it was apparent from this email that at least one individual defendant was available to be deposed on each of the four dates that had been chosen. I informed Mr. Suhovsky that we could reserve November 4, 2020, for Mr. Caraballo and I contacted Washington Correctional Facility for permission to visit Mr. Caraballo to prepare him for his deposition.

On October 27, 2020, Washington Correctional Facility informed me that their visiting room would not be open prior to the November 4 and 5 dates. I informed Mr. Suhovsky of this and further told him that the deposition would have to be moved to November 11 or 12, depending on when the visitation room would be open. On October 28, 2020, I met and conferred with Mr. Suhovsky during which time he notified me that he had "just" received an email that the officers were not allowed to appear at the Law Department during election week. He then suggested that we find out when Mr. Caraballo could be prepped and, therefore, deposed, and then stated that the officers would be scheduled for after Mr. Caraballo was deposed.

When I confronted Mr. Suhovsky about this sudden email he received and that it was my experience that members of the Law Department consistently attempt to structure depositions in a manner in which the plaintiff appears first, he provided no explanation as to why the officers could not appear for their depositions, nor did he allege that they would not be on duty on November 4 or 5. I further informed Mr. Suhovsky that the attempts to structure the depositions in such a manner were against the FRCP and the Court's Case Scheduling Order.¹

While this is normally not a cause for concern, it is in this matter. The undersigned is scheduling or has scheduled other matters through the month of December, and, should depositions be rescheduled by Defendants so as to force Mr. Caraballo to be deposed first, the undersigned will not have further availability until January 2021.

Further, such conduct by Defendants obstructs Mr. Caraballo from obtaining discovery in this matter. FRCP Rule 26 was amended to allow parties to pursue discovery without delay by another party. While it is clear that the Court has discretion to sequence discovery, such relief is only granted for "the most obviously compelling reasons." Barron & Holtzoff, *Federal Practice and Procedure* 447-47 (Wright ed. 1961); *see also* Younger, *Priority of Pretrial Examination in the Federal Courts—A Comment*, 34 N.Y.U.L.Rev. 1271 (1959); Freund, *The Pleading and Pretrial of an Antitrust Claim*, 46 Corn.L.Q. 555, 564, (1964). There is no such compelling reason here as at least one individual defendant is available to be deposed on November 4, 5, and 12, 2020. Furthermore, the Case Scheduling Order in this matter (Docket Entry No. 21) specifically states that "[d]epositions shall proceed concurrently."

Given the foregoing, Mr. Caraballo respectfully requests that the Court direct Defendants to produce the individual defendants for deposition on November 4, 5, and 12, 2020. Mr. Caraballo also requests such other and further relief as the Court may deem just and necessary.

Thank you for your time and consideration of this matter.

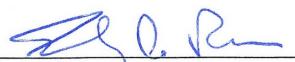
Respectfully submitted,

/s/
Gregory Paul Mouton, Jr., Esq.

cc:

Stephen Suhovsky, Esq.
New York City Law Department
Attorneys for Defendants
100 Church Street
New York, NY 10007

Defendant has already been instructed to file a response regarding Doc. No. 43 by October 30, 2020. See Doc. No. 44. In that response, Defendant may also address points raised in this letter.
IT IS SO ORDERED.


Edgardo Ramos, U.S.D.J
Dated: 10/29/2020
New York, New York

¹ I have since been informed by Washington Correctional Facility that their visitation room will reopen on November 9, 2020, so Mr. Caraballo's deposition can proceed on November 11, 2020.